

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

AARON ROME,	§	
	§	
<i>Plaintiff,</i>	§	
v.	§	C.A. No. 3:16-CV-02480-N
	§	
HCC LIFE INSURANCE COMPANY and	§	
HCC SPECIALTY UNDERWRITERS, INC.	§	
	§	
<i>Defendants.</i>	§	

DEFENDANTS' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

TO THE HONORABLE COURT:

Defendants HCC Life Insurance Company ("HCC") and HCC Specialty Underwriters, Inc. file this Answer to Plaintiff Aaron Rome's ("Rome") First Amended Complaint (Doc. #53) and respectfully show as follows:

I. ANSWER

1. Defendants admit Rome is an individual who purports to be a citizen of Canada.
2. Defendants admit HCC Life Insurance Company has been served with the First Amended Complaint.
3. Defendants admit HCC Specialty Underwriters, Inc. has been served with the First Amended Complaint, but deny that it is liable to Rome. Pursuant to Paragraph 5 of the Joint Stipulation, attached as **Exhibit 1**, Rome and HCC Life reached an agreement that HCC Life is solely responsible for any obligation under the Policy.
4. Defendants admit Paragraph 4 of the Amended Complaint purports to incorporate earlier paragraphs.

5. Defendants deny that Rome has filed a proper Notice of Appeal of the Court's June 20, 2018 Order, but admit the Court has jurisdiction under ERISA.

6. Defendants admit venue is proper in this district.

7. Defendants admit Paragraph 7 of the Amended Complaint purports to incorporate earlier paragraphs.

8. Defendants deny that Rome has filed a proper Notice of Appeal of the Court's June 20, 2018 Order.

9. Defendants admit Rome was an NHL player, but Defendants do not have sufficient information to admit or deny Rome's abilities as an NHL player. Defendants deny Rome's description of injury as set forth in Paragraph 9.

10. Defendants do not have sufficient information to admit or deny Rome's alleged rehabilitation efforts. Defendants admit that the August 4, 2017 determination of appeal letter states that Dr. Szatkowski opined that it was his professional opinion that Rome was permanently and totally disabled from professional hockey. However, Rome's injury fell within the Policy exclusion for "osteoarthritis, cumulative injury or degenerative joint disease" and was therefore excluded from coverage.

11. Defendants admit that Rome was an eligible NHL player covered by the Policy, and admit the Policy is governed by ERISA. Defendants further admit that Rome submitted a claim under the Policy. The remaining allegations are denied.

12. Defendants admit Daniel Libby is an HCC agent who was involved with Rome's claim under the Policy, but deny Rome's description of his actions.

13. Defendants deny Rome's description of Libby as refusing to cooperate or somehow "planning" denial of Rome's claim. Defendants further deny Rome's characterization of Libby's qualifications or credentials.

14. Defendants admit the Policy and Rome's claim are governed by ERISA and admit communications with Rome, but deny Rome's claim was compensable under the Policy.

15. Defendants object to Paragraph 15 as stating allegations that have no relevance to Rome's ERISA claim for benefits under the Policy. Defendants further state that Paragraph 15 contradicts the Court's Order, which held ERISA governs the present case, and Paragraph 15 urges matters that were resolved via the parties' Joint Stipulation, attached as Exhibit 1. Further, both decision letters do, in fact, identify the name of a medical expert consulted by Defendants.

16. Defendants object to Paragraph 16 as stating allegations that have no relevance to Rome's ERISA claim for benefits under the Policy. Defendants further state that Paragraph 16 contradicts the Court's Order which held ERISA governs the present case, and the parties resolved all standards related to appeal based on the Joint Stipulation, attached as Exhibit 1.

17. Defendants object to Paragraph 17 as stating allegations that have no relevance to Rome's ERISA claim for benefits under the Policy. Defendants further deny Rome's characterization of Defendants' conduct. As Rome (or his counsel) is aware, Defendants have provided numerous extensions to Rome throughout the administrative process as well as the litigation. In any event, Rome's alleged issues regarding the administrative appeal process were resolved pursuant to the Joint Stipulation, attached as Exhibit 1.

18. Defendants deny Paragraph 18.

19. Defendants object to Paragraph 19 as stating allegations that have no relevance to Plaintiff's ERISA claim for benefits under the Policy. As Rome knows, on December 9, 2016, a

Joint Stipulation was entered in this case that resolved issues related to whether and when Rome could engage in an administrative appeal of his denial of benefits under the Policy. *See* Joint Stipulation, ¶ 4, attached as Exhibit 1.

20. Defendants object to Paragraph 20 of the Amended Complaint to the extent it attempts to allege an ERISA Plan does not exist. The Court's June 20, 2018 Order has already determined a Plan governed by ERISA exists, and Paragraph 20 should be stricken. With regard to content of any documents, the documents speak for themselves, but Defendants deny the documents are "prejudiced," "vague," or "incomplete."

21. Defendants admit removal, but deny the remainder of Paragraph 21.

22. Defendants admit there was an agreement regarding dismissal, the administrative process and other matters. The Joint Stipulation is attached as Exhibit 1.

23. Defendants admit HCC moved to dismiss Rome's lawsuit based on ERISA preemption both before and after the Joint Stipulation.

24. Defendants admit that there was an administrative appeal, which affirmed that Rome was not entitled to benefits under the Policy. With regard to additional information on appeal, Rome did not submit any additional medical information.

25. Defendants admit Paragraph 25 of the Amended Complaint.

26. The Court's June 20, 2018 Order has already determined a Plan governed by ERISA exists, and Paragraph 26 of the Amended Complaint should be stricken. Further, the Plan at issue was not sold or issued in Texas.

27. Defendants admit that the August 4, 2017 determination of appeal letter states that Dr. Szatkowski opined that it was his professional opinion that Rome was permanently and totally disabled from professional hockey. However, Rome's injury fell within the Policy

exclusion for “osteoarthritis, cumulative injury or degenerative joint disease” and was therefore excluded from coverage.

28. Defendants deny Rome’s characterization of the Plan.

29. The Court’s June 20, 2018 Order has already determined an ERISA Plan exists and preempts Texas law. Paragraph 29 of the Amended Complaint ignores the Court’s Order and should be stricken.

30. Defendants deny Paragraph 30.

31. Defendants deny Paragraph 31.

32. Defendants agree that Rome’s claim under the Policy was denied. Defendants deny the remainder of Paragraph 32.

33. Defendants admit that Rome was an eligible NHL Player under the Policy and admit that Rome’s claim was denied. Defendants deny the remainder of Paragraph 33.

34. Defendants deny Paragraph 34.

35. Defendants admit that Rome has exhausted his administrative remedies, but deny the remainder of Paragraph 35.

36. Defendants admit that the August 4, 2017 determination of appeal letter states that Dr. Szatkowski opined that it was his professional opinion that Rome was permanently and totally disabled from professional hockey. However, Rome’s injury fell within the Policy exclusion for “osteoarthritis, cumulative injury or degenerative joint disease” and was therefore excluded from coverage.

37. Defendants deny Paragraph 37.

38. Defendants admit Rome seeks to incorporate earlier paragraphs, and Defendants incorporate its responses.

39. Defendants deny Paragraph 39.

40. Defendants state that Rome failed to establish a right to benefits under the Policy, but he did initiate his claim.

41. Defendants are not required to admit alleged statements of law. With regard to any factual allegations, Defendants deny Paragraph 41.

42. Defendants deny Paragraph 42.

43. Defendants admits Rome seeks benefits under ERISA, but deny Rome ultimately is entitled to benefits under the Policy.

44. Defendants admit Rome seeks to incorporate earlier paragraphs, and Defendants incorporate its responses.

45. Defendants admits Rome seeks attorneys' fees, but deny Rome is ultimately entitled to those fees.

46. Defendants admit Rome seeks relief in the Prayer for Relief, but deny he ultimately will be entitled to the relief sought.

47. To the extent any allegation is not specifically addressed herein, Defendants deny the allegation.

48. In answering Rome's allegations, Defendants do not intend to limit the reasons for the denial as set forth in the August 4, 2017 determination of appeal letter and associated documents.

II. AFFIRMATIVE DEFENSES

49. No benefits are owed and Rome's claim is barred by the Policy exclusion for "[o]steoarthritis, cumulative injury or degenerative joint disease." *See* August 4, 2017 determination of appeal letter.

50. As set forth above, HCC Specialty Underwriters, Inc. is not a proper party, and all claims against it are barred by the parties' stipulation and the doctrines of equitable estoppel and estoppel by contract.

III. CONCLUSION & PRAYER

Accordingly, Defendants request that Plaintiff take nothing by his claims, that Defendants receive judgment in their favor, and that the Court grant Defendants any additional relief to which the Court determines they are entitled.

Respectfully submitted,

/s/ Mike Birrer

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CERTIFICATE OF SERVICE

On August 3, 2018, I electronically filed the foregoing document with the Clerk of Court for the U.S. District Court, Northern District of Texas, using the electronic case filing system of the Court. Service on all attorneys of record who are Filing Users will be automatically accomplished through notice of electronic filing.

/s/ Parker Graham

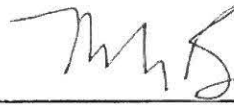
EXHIBIT 1

agrees that he will not seek any additional relief against any other of the defendants being dismissed in the attached Motion to Dismiss Certain Defendants Without Prejudice and to Stay Case related to Plaintiff's claim for disability benefits covered under the Policy.

3. The Parties agree the attached Agreed Motion to Dismiss Certain Defendants Without Prejudice and to Stay Case and Proposed Order Granting Agreed Motion to Dismiss Certain Defendants Without Prejudice and to Stay Case (Exhibit B) will be promptly filed with the Court upon all Parties' signatures to this Joint Stipulation and Exhibit A hereto.
4. Rome and HCC Life agree that Rome will have one hundred and eighty (180) days from the date this Joint Stipulation is signed by all Parties to provide any evidentiary or other submission related to his administrative appeal under the Policy to HCC Life or its designated representative whom HCC Life will specifically identify in writing to Rome's counsel within five (5) business days of execution of this Stipulation. Rome and HCC Life further agree that, after Rome's one hundred and eighty (180) day period to provide additional information expires, a decision will be rendered on the administrative appeal within ninety (90) days. Rome and HCC Life agree that this agreed-upon deadline for an administrative appeal will replace any conflicting deadlines set forth in the underlying Policy, plan documents or related claims regulations, and Rome and HCC Life waive any right to insist upon application of any original conflicting deadlines set forth in the Policy, plan documents, or related claims regulations.
5. HCC Life stipulates and Rome and HCC Life agree that HCC Life is solely responsible for any obligation to pay benefits, costs, and/or fees under the Policy.
6. All parties acknowledge, agree and consent that HCC Life has the authority and authorization to make this Joint Stipulation, including extending any deadlines and claims handling.

The Parties have authorized their counsel to sign and date this Joint Stipulation on their behalves, and it is binding on all Parties. This Joint Stipulation may be entered in Court to enforce any Joint Stipulation provided herein.

JOINT STIPULATION AGREED TO:

 12/9/16

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